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मध्यप्रदेश राजपत्र

(असाधारण)

प्राधिकार से प्रकाशित

क्रमांक 142]

भोपाल, बुधवार, दिनांक 4 जून 2025—ज्येष्ठ 14, शकं 1947

विधि और विधायी (निर्वाचन) कार्य विभाग

भोपाल, दिनांक 4 जून 2025

फा. क्र. EP. 18--2024-चार-वि.निर्वा.-43.— भारत निर्वाचन आयोग की अधिसूचना क्रमांक 82/म.प्र.-लो.स.
/(18/2024) 2025, दिनांक 20 मई 2025 सर्वसाधारण की जानकारी हेतु प्रकाशित की जाती है :-

संजय कुमार श्रीवास्तव, उपसचिव.

भारत निर्वाचन आयोग

निर्वाचन सदन, अशोक रोड, नई दिल्ली-110 001

नई दिल्ली, तारीख 20 मई, 2025-वैशाख 30, 1947 (शक)

अधिसूचना

सं०- 82/म.प्र.-लो.स./ (18/2024)/2025 - लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, निर्वाचन आयोग, 2024 की निर्वाचन याचिका सं० 18 में माननीय मध्य प्रदेश उच्च न्यायालय (जबलपुर बेंच) के दिनांक 07.04.2025 के निर्णय/आदेश को एतद्वारा प्रकाशित करता है (श्री नरेन्द्र पटेल विरुद्ध ज्ञानेश्वर पाटिल)।

आदेश से,
हस्ता./-
(सुमन कुमार दास)
सचिव,
भारत निर्वाचन आयोग.

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi-110 001

New Delhi, Dated 20th May, 2025—Vaishakh 30, 1947 (Saka)**NOTIFICATION**

No. 82/MP-HP/(18/ 2024)/2025 - In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the Judgment Order dated 07.04.2025 of the Hon'ble High Court of Madhya Pradesh (Jabalpur Bench) in the Election Petition No. 18 of 2024 (Sh. Narendra Patel Vs. Shri. Gyaneshwar Patil).

**IN THE HIGH COURT OF MADHYA PRADESH PRINCIPAL SEAT AT
JABALPUR**

ELECTION PETITION No. _____ /2024

Cause Title

Election Petitioner:

Narendra Patel S/o Shri Pyarelal Patel, aged about 62 years, Occupation agriculturist, R/o 51, Bapa Mansion, Maulana Azad Road, Sanawad, District Khargone (M.P.).

Versus

Respondent:

1. Shri Gyaneshwar Patil S/o Shri Natthu Patil, aged about 55 years, R/o B-5, Sanjay Nagar B, Burhandpur, District Burhanpur (M.P.).
2. Shri Munnalal S/o Shri Dhannalal Teji R/o Village Mitawal, Tehsil Jhiranya, District Khargone (M.P.).
3. Shri Abhinesh Singh S/o Not Known, R/o M-37, Kishore Nagar, Khandwa (M.P.).
4. Shri Narayan Shukdev Pal S/o Not Known, R/o H. No. 21, Thakur Raghuvir Singh Marg, Burhanpur, Tehsil and District Burhanpur (M.P.).
5. Shri Prakash Rathore Banjara S/o Not Known, R/o Village Ambajhar, Post Goradiya Kala, District Dewas (M.P.).
6. Shri Mahesh Pawar S/o Not Known, R/o H. No. 150, Ramnagar, Housing Board Colony, Sector-2, Khandwa (M.P.).

I by Shri. Narendra Patel
 notified by Shri. Abhay Pandey P.N. No. 1472/05
 at 6.10 a.m./p.m. on 18/07/24
 verily drawn up, within time and
 stamped.

I, Narendra Patel S/o Pyarelal Patel, aged about 62 years, election petitioner, do hereby verify that it is true to my personal knowledge that the contents of this petition are the same contained in the original and nothing stated therein is false and noting has been suppressed.

VERIFICATION

By Abhay Pandey Registrar (Judicial-II)

1472/05

7. Shri Manoj Kumar Vishwambharnath Agrawal, S/o Not Known, R/o G. Ratan Palace, Thakur Govind Wala Road, Khairati Bazar, Kila Road, Burhanpur (M.P.).
8. Shri Ravindra Sonwane S/o Not Known, R/o H. No. 10, Ward No. 1, Mahajana Peth, Burhanpur, District Burhanpur (M.P.).
9. Shri Laxmi Narayan Katore S/o Not Known, R/o D.N. Mehta Road, Gali No. 1, Mata Chowk, Jaswadi Road, Khandwa (M.P.).
10. Shri Shivam Sen S/o Not Known, R/o H. No. 210, Shivaji Ward 12, Onkareshwar, Tehsil Punasa, District Khandwa (M.P.).

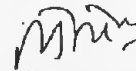
Election Petition under Section 80, 80-A, 80(1) and Section 100 and 101 of the Representation of the People Act, 1951

The election petitioner is calling in question the election of respondent No.1/returned candidate as a Member of Parliament from Lok Sabha Constituency No. 28, Khandwa on following facts and grounds and submits as under :

1. That, the petitioner is citizen of India and residing permanently on the address mentioned above in cause title. Petitioner has contested the election as an authorized candidate of Indian National Congress from

VERIFICATION

I, Narendra Patel S/o Pyarelal Patel, aged about 62 years, election petitioner, do hereby verify that it is true to my personal knowledge that the contents of this petition are the same contained in the original and nothing stated therein is false and nothing has been



IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK JAIN

ELECTION PETITION No. 18 of 2024

NARENDRA PATEL

Versus

SHRI GYANESHWAR PATIL AND OTHERS

Appearance:

Shri Abhishek Arjaria - Advocate for the petitioner.

Shri Prakash Upadhyaya - Senior Advocate with Shri Ravindranath Chaturvedi - Advocate for the respondent No.1.

Respondent No.7 in person through V.C.

None for the respondent Nos.2 & 8. Respondent Nos.3, 4, 5, 6, 9 and 10 are already proceeded ex-parte.

ORDER

(Reserved on : 10.01.2025)

(Pronounced on : 07.04.2025)

Heard on IA No. 19879/2024 which is an application under Order VII Rule 11 C.P.C. for rejection of the election petition. The matter was heard at length on 10.1.2025 and all the arguments were advanced exhaustively. The parties were further granted liberty to file written submissions, if they so wish, while the matter was reserved for orders on said IA.

2. One of the grounds for rejection of the petition is that the election petition has been filed on the ground of corrupt practices inasmuch as the returned candidate did not disclose liabilities towards a financial

institution in his nomination form and affidavit attached to the nomination form. However, Para-8 of the election petition does not contain material facts by not disclosing that what is the amount of default of the returned candidate on the date of nomination and that the returned candidate suppressed the said liability from the general public by not mentioning the said liability in the nomination form and the affidavit. The only averment in the election petition is on the basis of some order dated 03.03.2020 passed by the Registrar Cooperative Societies holding that the returned candidate was defaulter to a Cooperative Bank and as on date of nomination to some other society (not that Bank) i.e. 10.2.2017, he was defaulter.

3. Looking to the aforesaid ground, as the election petitioner did not come out with specific material to show the default of the returned candidate on the date of nomination, this application was earlier dealt with vide order dated 18.10.2024 and this Court had relied on the order passed by the Hon'ble Supreme Court recently in case of **Arif Masood Vs. Dhruv Narayan Singh (Civil Appeal No. 10388/2024 decided on 10.9.2024)** wherein the High Court had rejected the application under Order VII Rule 11 for rejection of election petition challenging election to State Legislative Assembly. In the aforesaid case, the bone of contention between the parties revolved around the contents of the affidavit filed by the appellant in form 26 alongwith his nomination and the case of the election petitioner was that the "current liabilities" have not been correctly disclosed. Some letters written by the State Bank of India were relied upon. The returned candidate came with plea that there was a fraud in the erstwhile State Bank of Mysore (now State Bank of India) and he alongwith his wife was infact, victim of the fraud, rather than being a defaulter. It was asserted that the alleged amount was never received by the returned candidate or his wife, and in criminal trial, the returned candidate is infact, a prosecution witness. The

Supreme Court in the aforesaid factual situation, had passed the following order :-

8. *We are conscious of the fact that the above issue is subject matter of a trial and no opinion can be expressed by us or the High Court during the pendency of the trial proceedings. However, with a view to consider the substance, if any, in the application under Order VII Rule 11 CPC, and to further determine as to whether the continuation of the Election Petition is an exercise in futility or there are triable issues, it would have been appropriate for the High Court to ascertain whether the letters dated 21.09.2023 (Annexures P-10 and P-11) are genuine and actually issued by the State Bank of India and/or are forged communication, as claimed by the appellant. Similarly, the High Court for the limited purpose of deciding the application under Order VII Rule 11 CPC might be well within its right to direct the Branch Manager of the State Bank to produce the relevant documents so as to find out any prima-facie merit in the rival contentions raised by the parties regarding the non-disclosure of the correct facts in the affidavit, filed by the appellant in compliance of Form-26. Maybe the record suggesting the alienation of any property in favour of the appellant or his wife by the builder, who is alleged to have misappropriated the sanctioned loan amount in connivance with the bank officials, too can throw some light for effective adjudication of the application under Order VII Rule 11 CPC.*

9. *For the reasons aforestated, however, without expressing any opinion on the merits of the contentions being raised by both the sides, it seems to us that the application under Order VII Rule 11 CPC, moved by the appellant-retuned candidate, requires fresh adjudication by the High Court.*

(Emphasis Supplied)

4. The Hon'ble Supreme Court, in the aforesaid case, had held that the High Court for the limited purpose of deciding the application under Order VII Rule 11 CPC might be well within its right to direct the Branch

Manager of the State Bank to produce the relevant documents so as to find out any prima-facie merit in the rival contentions raised by the parties to establish whether there are any triable issues arising in the matter.

5. Following the aforesaid judgement of the Supreme Court, before deciding IA No. 19879/2024, this Court deemed it fit to examine the General Manager/Chief Executive Officer of Citizen Cooperative Bank, Burhanpur. Summons were issued for production of General Manager/Chief Executive Officer, Citizen Cooperative Bank, Burhanpur (MP) to appear with original records if any, to throw light on the status of dues of the returned candidate/respondent No.1 as on the date of his nomination for parliamentary election i.e. 23.4.2024. In compliance of the said order, Shri Pandurang Sonvane, Senior Cooperative Inspector cum Liquidator of Citizen Cooperative Bank Ltd., Burhanpur was examined on 13.11.2024 as the Bank has since been placed under liquidation and the liquidator is looking after the affairs of the Bank as custodian of record and supervising residual activities of the said Bank under liquidation. He also placed on record No-dues and Account statements of the returned candidate and his firm.

6. The learned counsel for the respondent No.1-returned candidate while pressing on the application under Order VII Rule 11 C.P.C. submitted that the election petition suffers from faulty verification inasmuch as in the election petition the verification clause contains certain paragraphs to be true and correct from the knowledge of the election petitioner while some paragraphs are true and correct from the information of the election petitioner while in the affidavit under Rule 94-A of conduct of election Rules the said paragraphs do not match and therefore, there is ambiguity in the verification that which of the paragraphs of the election petition are based on personal knowledge and which paragraphs are based on the information obtained by the petitioner.

7. It is further argued that in election petition this information is material because the returned candidate must know that which of the facts are to be cross-examined from the election petitioner himself and which of the facts are to be cross-examined from other persons who may be brought as witness to prove the facts which are based on the information obtained by the election petitioner while the information which is verified to be proved on the basis of knowledge of election petitioner may be required to be cross-examined from the election petitioner himself. Thus, the election petition deserves to be rejected on the ground of faulty verification.

8. It was further contended that the election petition has been filed on the ground of corrupt practices inasmuch as the returned candidate did not disclose liabilities towards a financial institution in his nomination form and affidavit attached to the nomination form. However, Para-8 of the election petition does not contain material facts by not disclosing that what is the amount of default of the returned candidate on the date of nomination and that the returned candidate suppressed the said liability from the general public by not mentioning the said liability in the nomination form and the affidavit. The only averment in the election petition is on the basis of some order dated 03.03.2020 passed by the Registrar Cooperative Societies holding that the returned candidate was defaulter to a Cooperative Bank and as on date of nomination to some other society (not that Bank) i.e. 10.2.2017, he was defaulter and as per mandate of Section 50-A of the M.P. Cooperative Societies Act 1960, he was removed from elected post as he was in default of loan to any Cooperative Society as on that date. Section 50-A is as under :-

50-A. Disqualification for being candidate or voter for election to Board of Director or representative or delegate of society.-

(1) No person shall be qualified to be a candidate for election as member of the Board of Directors, representative or delegate of the society if he is in default for a period exceeding 12 months to the society or any other society for any loan or advance taken by him.

(2) A person elected to an office of a society shall cease to hold such office, if he is in default for a period exceeding 12 months to the society or any other society for any loan or advance taken by him, and the Registrar shall declare his seat vacant: Provided that a person elected to an office of a co-operative bank from a society other than co-operative credit structure, shall cease to hold such office if such society commits default for any loan or advance for a period exceeding three months, and the Registrar shall declare his seat vacant.

9. Therefore, it is contended that the petition is founded on mere apprehension or speculation that the returned election as he was in default of loan to a Bank as on 10.2.2017, must necessarily be in default as on the date of nomination to parliamentary elections which took place in April 2024. Therefore, it is contended that there is failure to plead necessary material facts on which the petitioner relies and in absence of pleading the amount of default on the date of nomination or the document or record or the reason by which the election petitioner believes that the petitioner is defaulter has not been disclosed in the election petition at all.

10. It is further contended that by not specifically pleading the amount of default/loan outstanding and by only pleading in the election petition that the petitioner sought information of the amount of default from the said society and other authorities of the State by moving application under Right to Information Act, the election petition is only founded on possibility that the returned candidate may be a defaulter of a financial institution and on the basis of mere possibility or apprehension, the jurisdiction of this Court challenging the election of candidate who has won by majority of votes and represents the will of public, cannot be invoked.

11. The learned counsel for the respondent No.1 further argued that how the alleged non-disclosure is undue influence in terms of Section 123 (2) of Representation of People Act 1951 (for short "Act of 1951") and how it has materially affected the election in terms of Section 100(1)(d) so as to constitute a corrupt practice, has not been disclosed in the election petition. The learned counsel for the respondent No.1 further submits that allegation of corrupt practice has to be specific and in absence of any specific pleading the election petition is liable to be rejected.

12. It was further contended that the witness Pandurang Sonawane, who appeared as CW-1, has also endorsed the fact that the returned candidate was having two accounts maintained with the Bank, one in his name and another in name of firm, of which he is the sole Proprietor. He has duly proved that there was no default of the returned candidate on the date of filing of nomination, there were no dues in both the accounts, as both stood settled in the year 2018 itself, much prior to nomination. Therefore, no triable issues remain in the case and the petition has to be rejected. So far as the suppression of assets is concerned, it is contended that there is no such assertion in the election petition to that effect that he suppressed the proprietorship of firm M/s Priyam Kela Supplier, and no new case can be allowed to be set up at the time of hearing of the Election petition, that is not founded on pleadings. Even otherwise, there are no pleadings in the petition that the returned candidate has any assets in the name of the said firm. What is material is suppression of assets, and not suppression of a firm. Unless that firm has some tangible or intangible assets, then only that suppression would have had any meaning and would amount to a triable issue. Moreso, now it has come on record that there is neither loan, nor deposit in the Bank account of the said firm also. Therefore, even if this issue is to be tried, then looking to the deposition of CW-1, nothing remains to be tried further in the matter.

13. *Per Contra*, the learned counsel for the election petitioner submits that a returned candidate is bound to disclose the assets and more particularly the liabilities towards public financial institutions so that the public can have a knowledge of the dubious financial dealings of the contesting candidate and the indebtedness of the contesting candidate. By placing reliance on the judgment of the Supreme Court in the case of **Lok Prahari Vs. Union of India reported in 2018 (4) SCC 699** (para 80, 81), it is argued that the attempt by a candidate to suppress his indebtedness would undisputably be a "undue influence and shall amount to corrupt practice. Reliance is also placed on **Union of India Vs. Assn. for Democratic Reforms, reported in 2002 (5) SCC 294**. It is further argued that the affidavit attached to the nomination form is required to be displayed to the public though there is no bar to display of the nomination form itself but affidavit is mandatorily required to be displayed to general public in terms of Section 33(A)(3) of the Act of 1951. It was contended that the information of debt towards the public financial institution registered as a cooperative society was not disclosed either in the nomination form or in the affidavit. It is further contended that once there is suppression in the affidavit attached to nomination, then there has to be inference of undue influence and corrupt practice, and therefore, it may not be necessary to plead in the election petition in specific terms that how it has materially affected the election result and it may be a point of determination at time of evidence and trial.

14. The learned counsel for the petitioner further argues that the alleged defect of affidavit attached to election petition and the alleged defect of verification in the present petition is a curable defect and that the election petition cannot be dismissed only on account of minor discrepancy in the verification in the petition and in the affidavit. The learned counsel relies on the following judgments :-

- a. **Ram Prasad Sarma Vs. Mani Kumar Subba (2003 (1) SCC 289)**
- b. **Regu Mahesh Vs. Rajendra Pratap Bhanj Dev (2004 (1) SCC 46)**
- c. **Chandrakant Uttam Chodankar Vs. Dayanand Rayu Mandrakar (2005(2)SCC 188)**
- d. **Umesh Challiyil Vs. K.P. Rajendran (2008 (11) SCC 740)**
- e. **G.M. Siddeshwar Vs. Prasanna Kumar (2013 (4) SCC 776)**

15. It is further contended that the material fact is the fact that the returned candidate having suppressed the indebtedness to public financial institution in the nomination and affidavit and it is the material fact which has been pleaded. The actual amount of loan or debt might be material particulars and it is not material fact. It is contended that there is difference between the material facts and material particulars and the election petition cannot be rejected for want of material particulars because the material facts are duly pleaded in the petition and compliance of Section 83 (1) (a) and (b) is pleaded in the present case. Reliance is placed on **Harkirat Singh Vs. Amrinder Singh, reported in 2005 (13) SCC 511.**

16. Coming to the deposition of CW-1 and bank statements as produced by him are concerned, it is argued that the bank statements produced by him are not fulfilling the requirements as per Section 2-A of Bankers Books Evidence Act 1879, and therefore, cannot be gone into for the purpose of adjudging whether there are liabilities or not towards a public financial institution, as they are inadmissible in evidence.

17. It is vehemently argued that even if for the sake of arguments, there may not be any loan default or outstanding on the date of nomination, but the proprietorship of M/s Priyam Kela Suppliers has been suppressed, which is itself a material suppression of assets, on basis of which triable issues remain in the case.

18. So far as the contention of the returned candidate that there is no specific pleading of corrupt practice in the affidavit is concerned, it is pointed out by learned counsel for the petitioner that the affidavit duly mentions the instance of corrupt practice by mentioning that there is allegation of suppression of fact in the affidavit attached with the nomination and therefore the affidavit attached to the election petition does not suffer from any defect in form and substance. Therefore, on these assertions it is prayed to reject the application under Order VII Rule 11 C.P.C.

19. Upon considering the rival contention of the parties and on perusal of the record, as far as violation of various provisions of Section 83 are concerned, trial of an election petition is dealt with under Section 86 the Act and it only authorizes the High Court to dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117. It is evident that provisions contained in Section 86 of the Act are *pari-materia* to the provisions contained in Order VII Rule 11 of CPC.

20. In case of **K. Babu Vs. M. Swaraj and Others (2024 (4) SCC 299)**, the Hon'ble Supreme Court has held that non-compliance with requirements of Section 83 is not fatal to election petition. Section 86(1) only speaks of non-compliance with Section 81, 82 or 117 of the 1951 Act being basis for dismissal of an election petition at outset. Defects in an election petition that constitute non-compliance with Section 83 are curable defects, therefore, the plea of non-compliance of Section 83(1)(a) or Section 83(1)(b) and 83 (1) (c) may not attract dismissal of the election petition in the present case in the light of **K. Babu (supra)**. The following has been held therein :-

13. Before us, arguments were advanced only upon non-compliance with Section 81(3) of the 1951 Act, warranting invocation of Section 86(1) thereof, and not

on the other issue regarding lack of material facts and particulars in the pleadings, as required by Section 83 of the 1951 Act. In any event, it is well settled that non-compliance with the requirements of Section 83 of the 1951 Act is not fatal, as Section 86(1) thereof only speaks of non-compliance with Sections 81, 82 or 117 being the basis for dismissal of an election petition at the outset. Defects in an election petition that constitute non-compliance with Section 83 of the 1951 Act have been held to be curable defects (see T. Phungzathang v. Hangkhanlian [(2001) 8 SCC 358] ; Umesh Challiyil v. K.P. Rajendran [(2008) 11 SCC 740] ; Ponnala Lakshmaiah v. Kommuri Pratap Reddy [(2012) 7 SCC 788] ; G.M. Siddeshwar v. Prasanna Kumar [(2013) 4 SCC 776 : (2013) 2 SCC (Civ) 715] ; and A. Manju v. Prajwal Revanna [(2022) 3 SCC 269 : (2022) 2 SCC (Civ) 95]). Further, once the High Court opined that a triable issue under Section 123(3) of the 1951 Act is made out, we find no grounds to interfere therewith.

21. However, before dealing with this ground and other grounds for rejection, it is appropriate to consider whether the basic foundational allegations, i.e. suppression of indebtedness to public financial institution, i.e. Citizen Cooperative Bank, Burhanpur (MP) are made out or not to constitute a triable issue, before proceeding further in the matter. For limited purpose of ascertaining that fact, evidence of CW-1 Pandurang Sonawane has been recorded by this Court. The election petitioner has harped on an order dated 03.3.2020 issued by the Registrar, Cooperative Societies, Madhya Pradesh, whereby the returned candidate has been held to be indebted to and defaulted in an loan to the tune of Rs. 71,85,517/- as on 10.2.2017 on which date he was elected to an office in an Cooperative Society. The returned candidate has contended that the petition is lacking in material facts inasmuch the exact amount indebtedness is not pleaded, and the allegation being only based on speculation based on an order dated 03.3.2020 recording the position as on 10.2.2017 mentioning indebtedness towards a Cooperative Bank on that date as Rs.71,85,517/- towards a loan

taken by the returned candidate during course of business. It has been countered by the learned counsel for the petitioner that they may call the Bank officials at the time of evidence and the exact amount is variable, hence, could not be specifically pleaded. It is further stated that the State authorities have not supplied the requisite information even after he sought the same under Right to Information Act. It was further stated that the returned candidate has not yet filed the written statement and no stand has been taken in respect of the truthfulness of the indebtedness.

22. Pandurang Sonawane (CW-1) has categorically deposed before this Court that the returned candidate had two loan accounts, one in name of M/s Priyam Kela Suppliers of which he was Proprietor, and another in his own name. The loan to M/s Priyam Kela Suppliers was disbursed on 01.7.2000 to the tune of Rs. 35.00 lacs and fully repaid on 31.1.2018 by paying Rs. 72,00,239/-. As on 31.1.2018, there was a surplus/positive balance in the said loan account, which was towards recovery commission to be paid to Tehsildar, and has no relation with the returned candidate. He produced print-out of account certified by the Branch Manager and copy of no-dues certificate issued by the Branch Manager and as Ex. C-1 and C-2/C.

23. In relation to the other account held by the returned candidate in his own name, it has been stated that on 13.10.2000, an amount of Rs. 16.00 lacs was disbursed and on 08.2.2018, the said account has been cleared by paying an amount of Rs. 26,84,036/- and now there are no dues in the said account. He produced print-out of account certified by the Branch Manager and copy of no-dues certificate issued by the Branch Manager and as Ex. C-3 and C-4/C.

24. It was vehemently argued by the learned counsel for the election petitioner that the account statements and no-dues are in-admissible in

evidence because they are not certified in the manner laid down in Section 2-A of Bankers Books Evidence Act 1891. On perusal of the said provisions, it is seen that indeed, the statements being computerized print-outs, lack the certificates and requirements under Section 2-A because it simply contains a seal of the Branch Manager and nothing else. So far as no-dues certificates are concerned, the same are true copies issued by the present Branch Manager, but signed by earlier Manager. It was argued that the said no-dues relates to information taken from Bankers Book, therefore, it must also have the requirements of Act of 1891.

25. It is to be considered whether the said defect will render the deposition of this witness denuded of any value. In the present case, the account statements and no-dues certificates are duly signed and stamped by the present Branch Manager. CW-1 in his deposition has categorically stated that he identifies the signatures of the Branch Manager who has ~~signed and stamped the computerized statements Ex. C-1 and C-3, and the...~~ same person has attested the true copies of no-dues certificates, Ex. C-2/C and C-4/C, though he does not identify the signatures of the original Branch Manager issuing these no-dues certificates, because the said person held the post prior to this witness being posted as liquidator.

26. In response to question No. 3 and 4, CW-1 categorically stated that he is stating the account position as per the Bank record and that he has verified the position from Bank record. Again in response to question No.23, he stated that the account statements are true as per the record of the Bank.

27. The Bombay High Court in the case of *Radheshyam G. Garg v. Safiyabai Ibrahim Lightwalla*, 1987 SCC OnLine Bom 22 = AIR 1988 Bom 361, has held that once an account statement is signed and stamped, ~~then~~ a certificate as per requirements of Section 2 is implicit therein and

such statements etc. cannot be ignored on hyper-technicalities. It was held as under :-

13. Mr. Raghuwanshi further, submitted that the original landlady Asmabai had not intimated the transfer of the suit premises to the plaintiffs and hence the defendant was justified in ignoring the plaintiffs' notice dated 21st August, 1975 whereunder they had intimated the defendant regarding the transfer of the property to the plaintiffs. Mr. Raghuwanshi submitted that it was open to the plaintiffs to request Asmabai, their mother, to inform the defendant that she had transferred the suit premises to the plaintiffs, but that the plaintiffs did not do. Mr. Raghuwanshi on placing reliance upon the counter foils of cheque books of the defendant, Exhibits 28 B-1, 2 and 3, Bank pass book, Exhibit 27/B-4 as also the extract of the accounts produced with the list, Exhibit 55A, contended that the defendant had paid rent by cheques to Asmabai by sending the same under certificate of posting, which cheques had been duly encashed by her. The said payments cover the period of rent upto to end of February 1977 and the defendant had deposited rent in Court for the period from March 1977 onwards. Mr. Raghuwanshi submitted that both the Courts below had erred in not exhibiting the aforesaid extract of account of the bank which had been duly signed by the Agent of the Andheri Branch of the Maharashtra State Co-operative Bank Ltd. The lower appellate Court by placing reliance on section 2(8) of the Bankers' Books Evidence Act, 1891 has held that 'certified copy' means a copy of any entry in the books of a Bank, together with a certificate written at the foot of such copy that it is a true copy of such entry, that such entry is contained in one of the ordinary books of the bank and was made in the usual and ordinary course of business, and that such book is still in the custody of the bank. Such certificate being dated and subscribed by the principal accountant or manager of the Bank with his name and official title. According to the learned Judge since the said extracts of statement of account had not been signed by the principal accountant or manager as required and since the same did not bear any date or official seal, the same could not be treated as certified copy and consequently the same could not be read in evidence.

14. In my judgment the aforesaid view of the learned Judge of the lower appellate Court was hypertechnical. The said extract of account was duly signed by the Agent of the bank. Implicit in it was a certificate that it was a true copy of an entry contained in one of the ordinary books of the bank and was made in the usual and ordinary course of business and that such book was in the custody of the bank. The detailed ingredients mentioned in the defining clause 8 of section 2 of Bankers' Books Evidence Act, 1891 for qualifying to be 'certified copy' are not mandatory but merely directory. Sufficient compliance depending upon facts and circumstances of each case is enough to qualify a document to be

'certified copy'. I, therefore, hold that the said extract of account produced at Exh. 55 A is admissible in evidence. The said extract along with the bank pass-book as also counter-foils of cheque book undoubtedly support the defence contention that he had paid the rent to the landlady Asmabai. Though defendant in his reply dated 29th April, 1977 had positively averred that he had paid rent by cheques sent to the landlady Asmabai under certificate of posting, the plaintiff took no steps to examine Asmabai, who was none else but the mother of the plaintiff. It was open to Asmabai to step into witness box and depose as to whether the defendant's case that he had paid rent to her was true or false. In that view of the matter I hold that the plaintiff is not entitled to a decree for possession on the ground of default in payment of rent.

28. In the case of *T.V. Rajan v. A.S. Sharafudheen, 2003 SCC OnLine Ker 374*, the Kerala High Court dealt with the issue where there was some defect in the certificate as per the Act of 1891, but the Bank officer had entered the witness box to prove the details of the account. No questions were put to him that the account details that he is stating in his deposition, are not the true position of the accounts. The Kerala High Court accepted the deposition of the Bank Officer.

29. In the present case, the liquidator of the Bank, who is the ultimate custodian of record of the Bank under liquidation, has duly proved the account statements and no-dues certificates by his deposition. Even if there is any defect in the statements etc. in terms of Section 2-A of Act of 1891, then it would have been fatal if there was no deposition of Bank officer, and then the benefit under Section-5 was not available. Here in this case, once the liquidator has proved that the accounts are not having any outstanding after January 2018, the said fact is duly proved and established.

30. It is very important that counsel for election was also given opportunity to ask questions from CW-1, which he conducted virtually like a cross-examination. However, no suggestion was given to CW-1 that the no-dues certificate was never given by the Bank, or that it is a false and fabricated document, and that as on April 2024, there were dues outstanding

in the accounts. Though questions were asked in the manner challenging the validity of settlement made by Bank with returned candidate in year 2018. but that is not the subject matter of issue being raised in the present election petition. There is no ground made out to disbelieve the deposition of the liquidator of the Bank, who is a Government officer, and appointed as such by orders of the Registrar. The liquidator discharges functions as per Section 71 of the M.P. Cooperative Societies Act 1960. These functions include - to determine the contribution (including debts due) to be made or remaining to be made to the society, to carry on the business of the society so far as may be necessary for the beneficial winding up, to compromise all liabilities and all claims, present or future, certain or contingent, subsisting or supposed to subsist between the society and a contributory or alleged contributory or other debtor, etc. and all questions in any way relating to or affecting the assets or the winding up of the society.

31. Therefore, it has to be and is accordingly held that the returned candidate did not have any and therefore, did not suppress any liability or indebtedness on the date of nomination in April 2024 in the loan account of M/s Priyam Kela Suppliers against Citizen Cooperative Bank, Burhanpur. Hence, no triable issue survives in the matter.

32. The counsel for election petitioner argued that there was suppression of assets also, and the existence of the firm M/s Priyam Kela Supplier was suppressed. No ground has been raised in the election petition that any asset is held by this Firm, rather the pleading is that there is indebtedness in name of this Firm. The election petitioner cannot raise a plea which is not pleaded. The election petition has to proceed on pleadings of the election petition. In the election petition, it has been vehemently pleaded that the returned candidate suppressed the existence of Firm M/s Priyam Kela Suppliers and therefore, suppressed his liabilities towards a public financial

institution. The grounds alleged are under Section 100 (d) (i) and (ii) of the Act of 1951 and corrupt practices u/s 123 (2) of the said Act.

33. If suppression of asset had been pleaded, then it would have become debatable whether material facts are pleaded, or something consisting a triable issue arises, because the candidate is required to disclose his assets and liabilities. Then the ancillary questions could have arisen in the matter of affect of such suppression on nomination and on election and whether it has materially affected the election or has cast undue influence on electors in terms of Section 123 of Act of 1951. However, there is not a single whisper in the entire petition, that any asset has been suppressed. What is alleged is non-disclosure of running a firm, wherein no asset is being alleged, and rather a liability is being alleged towards a public financial institution. Therefore, the argument of non-disclosure of assets is an argument in mere desperation, and nothing else, as it is not founded on any pleading.

34. In view of the aforesaid discussion, in the considered opinion of this Court, it would be an exercise in futility to try the present election petition on merits by allowing the parties to lead evidence, only to be dismissed subsequently, because no triable issues are made out. As a result, **I.A.No.19879/2024 is hereby allowed and the election petition is hereby rejected.** No costs.

Sd./-
(VIVEK JAIN)
Judge.

By order,
Sd./-
(SUMAN KUMAR Das)
Secretary,
Election Commission of India.